

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HILDA L. SOLIS, SECRETARY OF
LABOR, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

JOHN J. KORESKO, V; et al,

Defendants.

NO. 2:09-CV-00988-CDJ

HONORABLE C. DARNELL JONES, II

ELECTRONICALLY FILED

**FARMERS AND MERCHANTS TRUST COMPANY OF CHAMBERSBURG'S,
SUCCESSOR BY MERGER TO COMMUNITY TRUST COMPANY, RESPONSE TO
THE KORESKO DEFENDANTS' MOTION FOR AN ORDER DIRECTING TD BANK,
N.A. AND PENNMONT BENEFIT SERVICES, INC. TO REPAY TRUST POLICY
LOANS WITH A DETAILED LIST OF LOAN REPAYMENTS FILED UNDER SEAL**

In their Motion for an Order Directing TD Bank, N.A. and PennMont Benefit Services, Inc. to Repay Trust Policy Loans with a Detailed List of Loan Repayments Filed Under Seal (the "Motion"), the Koresko Defendants allege that they have provided the Court with certain information under seal identifying the loans to be repaid by amount, carrier payee and policy number. The Koresko Defendants go on to allege that F&M Trust "reviewed a sample of the spreadsheet at Exhibit B when the Koresko Parties prepared the previous motion," and that F&M Trust "deemed that information sufficient to comply with the form of the Order proposed herein". The Koresko Defendants further allege that the "information on the spreadsheet was determined sufficient for F&M to review for any objection thereto and for TD Bank to execute the loan repayments set forth".

F&M Trust files this Response to clarify several things. First, F&M Trust did not object to the Koresko Defendants' First Motion Seeking to Repay the Trust Policy Loans (Docket No.

185) because the Motion sought an Order that would have made the repayment of the loans subject to F&M Trust providing its prior written consent to TD Bank that it was satisfied with information and instructions that would not even be provided to F&M Trust unless and until the Court would enter such an Order. The Koresko Defendants have not provided F&M Trust with copies of the sealed documents attached to its Motion, nor has F&M Trust been provided an opportunity to review this information. Having not been provided with this information, F&M Trust thus objects to the Koresko Defendants' assertions that F&M Trust would have considered the information sufficient in order to provide its consent. F&M Trust, therefore, has no current basis upon which to assess whether or not the information would provide a sufficient basis upon which F&M Trust could consent to, or not object to, the proposed loan payments. Such assessment and consent or lack of objection only can be forthcoming upon a review of the actual information that, heretofore, has purportedly been filed "under seal." That having been said, F&M Trust will comply with any decision reached by the Court with respect to the Motion regarding the repayment of the policy loans.

Respectfully submitted,

RHOADS & SINON LLP

Date: December 29, 2009

By: /s/Timothy J. Nieman

Timothy J. Nieman

Attorney I.D. No. 66024

Stephen Moniak

Attorney I.D. No. 80035

One South Market Square

P.O. Box 1146

Harrisburg, PA 17108-1146

(717) 233-5731

tnieman@rhoads-sinon.com

smoniak@rhoads-sinon.com

Attorneys for Defendant Farmers and
Merchants Trust Company of
Chambersburg, successor by merger to
Community Trust Company

CERTIFICATE OF SERVICE

It is hereby certified that on December 29, 2009, the foregoing document was transmitted electronically to the Court for filing and for electronic service, upon the following:

Joan M. Roller, Esquire
Linda M. Henry, Esquire
Joanne Jarquin, Esquire
U.S. Department of Labor
Office of the Solicitor
Suite 630E, The Curtis Center
170 S. Independence Mall, West
Philadelphia, PA 19106-3306

John J. Koresko, V, Esquire
Koresko Law Firm, P.C.
200 West Fourth Street
Bridgeport, PA 19405

Elizabeth Hoop Fay, Esquire
A. Lauren Carpenter, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

H. Marc Tepper, Esquire
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102

/s/ Timothy J. Nieman
Timothy J. Nieman